



July 19, 1999

Ms. Linda Cloud  
Executive Director  
Texas Lottery Commission  
P.O. Box 16630  
Austin, Texas 78761-6630

OR99-2025

Dear Ms. Cloud:

You ask this office to reconsider our ruling in Open Records Letter No. 99-0767 (1999). Your request was assigned ID# 125082.

The Texas Lottery Commission (the "commission") received requests for the names and hometowns of members of the BBB Revocable Trust and the amount of winnings that each member receives. In Open Records Letter No. 99-0767, this office concluded that the name and hometown of the trustor were not protected from disclosure under section 552.101 and must be released. We further concluded that the information contained in the Trust Agreement reflected the trustor's personal financial decisions, and as such, was excepted from public disclosure under section 552.101.

In your request for reconsideration, you explain that there may have been some miscommunication regarding the identity of the prize winner. You state that "[a]ccording to the Commission's administrative rules, the Executive Director 'shall recognize only one person as claimant of a particular prize.' 16 TAC § 401.304(e)(6). In this case, the BBB Revocable Trust claimed the prize and therefore, the BBB Revocable Trust is the only person entitled to be recognized as the 'prize winner.'" Representatives of the BBB Revocable Trust also argue that the trust is the only prize winner. In our ruling, we found, based on the submitted information, that the trustor was the prize winner. Upon consideration of your new arguments and review of the submitted information, we agree that the trust and not the trustor is the prize winner. Therefore, we will re-examine whether the name and hometown of the trustor are excepted from disclosure under section 552.101.

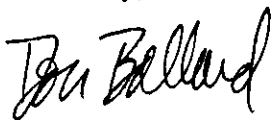
Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

Prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). We agree that the lottery winnings are public funds and, therefore, a governmental transaction exists between the governmental body and the trust which is the prize winner. The decision by the trustor to create a trust, however, is a personal financial decision that does not involve a transaction with a governmental body. Therefore, we conclude that the name and address of the trustor constitutes private information that is excepted from disclosure under section 552.101 in conjunction with the common-law right to privacy.

You also ask that we reconsider our determination that information regarding the beneficiaries of the trust and the disposition of the trust is excepted from required public disclosure. As previously stated, we believe this information reflects the trustor's personal financial decision and does not involve a financial transaction between him and a governmental body. Therefore, the commission must withhold this information from public disclosure. Open Records Letter No. 99-0767 is overruled only to the extent that it conflicts with this decision.

If you have any questions regarding this ruling, please contact our office.

Sincerely,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/JBH/ch

Ref.: ID# 125082

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